

hereto and incorporated herein, Houston Cellular would show immediate and irreparable injury will occur to Houston Cellular if an order enjoining defendants from altering, transferring, emulating or manipulating the ESNs is not granted. Specifically, as shown by the affidavit of Mike Hanafin, Vice President of Engineering and Operations, attached as Exhibit "D," Houston Cellular would show that it has no way of monitoring altered telephones and will continue to suffer fraudulent and unauthorized use of air time and theft of air time unless this order is granted. Furthermore, without records from defendants indicating the names of customers who have received altered telephones, Houston Cellular does not have a way to monitor the unauthorized use of cellular telephones or notify specific customers that they are using cellular telephones in an unauthorized manner.

19. In addition, 28 U.S.C. § 401(b) states:

222  
(b) If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the appropriate district court of the United States for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such person, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

20. In *South Central Bell Telephone Company v. Louisiana Public Service Commission*, 744 F.2d 1107 (5th Cir. 1984) vacated on other grounds 106 S. Ct. 2884. The Fifth Circuit, interpreting § 401(b), stated:

Under § 401(b), a party seeking enforcement of an FCC declaration may obtain an injunction upon a finding that (1) the declaration is an FCC "order" within the meaning of the Act, (2) the order was regularly made and duly served upon the defendant, (3) the defendant is in disobedience of the order, and (4) the party seeking the injunction has been injured by the defendant's disobedience.

*Id.* at 1114-1115.

21. An FCC declaration is an "order," if the "agency acts in accordance with its legislatively delegating rule making authority" and intends it to be binding on all applicable

persons. *Id.* at 1115. On their face, the ESN Orders are "orders" prohibiting individuals, *inter alia*, from using cellular phones with altered ESNs or from altering ESNs in cellular phones.

22. In order to show that an order was duly served, the Fifth Circuit has stated:

Thus, the requirement of "due service" is met if the defendant in a § 401(b) proceeding received notice legally sufficient to make the order enforceable. Under the APA [Administrative Procedures Act], a rule is enforceable once it is published in the *Federal Register*. 5 U.S.C. § 552(a)(1). The Supreme Court has held that appearance of a rule in that publication constitutes legal notice to the general public.

*Id.* at 1119 (cites omitted). The FCC adopted the ESN Orders pursuant to lawful notice and rule making proceedings under the APA, and the referenced ESN Orders were published in the Federal Register.

23. Houston Cellular, through the affidavits and Exhibits attached hereto and incorporated herein, has shown that the defendants have violated "orders" of the FCC which have been "duly served" upon the defendants. Because Houston Cellular has been injured by defendants' disobedience, it is entitled to a temporary restraining order prohibiting the altering, transferring, emulating or manipulating of ESNs of cellular telephones and enjoining defendants from altering or destroying any records relating to the altering, emulating, transferring or manipulating of ESNs.

## **VII. REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION**

24. By way of this Complaint, Houston Cellular asks the court to set a date, within ten (10) days of the signing of the temporary restraining order, for hearing on the preliminary injunction. At the same time, Houston Cellular asks the court to order defendants to produce certain records relating to the altering, transferring, emulating or manipulating of cellular telephones, the servicing of clients, and/or responses to inquiries about such altering, transferring, emulating or manipulating on cellular telephones to the court for in camera inspection and safekeeping.

25. Furthermore, after the preliminary injunction hearing, Houston Cellular asks for a trial at the earliest possible setting in order to permanently enjoin defendants from (1) altering, transferring, emulating or manipulating the ESN on cellular telephones, or (2) altering or

destroying any record that relates to the altering, transferring, emulating or manipulating of cellular telephones, or the servicing of clients or responses to inquiries about such altering, transferring, emulating or manipulating on cellular telephones.

**VIII.**  
**REQUEST FOR DECLARATORY RELIEF PURSUANT TO**  
**28 U.S.C. 2201 ET SEQ.**

26. Pursuant to 28 U.S.C. 2201(a), Houston Cellular seeks a judgment from this court declaring the rights and obligations of Houston Cellular and the defendants. Specifically, Houston Cellular asks the court to declare:

(1) Defendants' altering, transferring, emulating or manipulating ESNs is a violation of the FCC's ESN Orders and regulations and aids and assists others in violating the FCC's ESN Orders and regulations.

(2) The use of emulated or altered telephones is a violation of the FCC's ESN Orders and regulations.

(3) Houston Cellular has the right and the obligation to determine the names of all customers who have had their cellular telephones altered, transferred, emulated or manipulated so as to advise and notify the customer that the use of altered, transferred, emulated or manipulated telephones is a violation of the FCC's ESN Orders and regulations.

(4) Defendants have no right to alter, transfer, emulate or manipulate cellular telephones of Houston Cellular customers.

27. Pursuant to 28 U.S.C. 2202, Houston Cellular seeks reimbursement of the reasonable and necessary attorneys' fees incurred by Houston Cellular for bringing this declaratory judgment action.

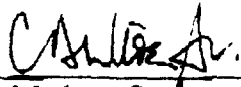
**IX.**  
**PRAYER**

28. Houston Cellular requests this court enter a temporary restraining order, after a hearing, preliminary injunction, and after a trial on the merits, a permanent injunction; that it be

awarded reasonable and necessary attorneys' fees in connection with the prosecution of this action; and for such other relief, at law or in equity, to which Houston Cellular shows itself justly entitled.

29. Pursuant to Fed.R.Civ.P. 38, Houston Cellular respectfully demands a trial by jury.

Respectfully submitted,

By:   
Mark A. Carrigan  
Federal I.D. No. 4999  
State Bar No. 03875200

Carlton D. Wilde, Jr.  
Federal I.D. No. 10694  
State Bar No. 21458001

500 Dallas Street, Suite 2600  
Houston, Texas 77002  
Telephone: (713) 654-4400  
Telecopier: (713) 654-8704

**ATTORNEYS IN CHARGE FOR  
HOUSTON CELLULAR TELEPHONE COMPANY**

**OF COUNSEL:**

CARRIGAN, LAPIN, LANDA & WILDE, L.L.P.  
500 Dallas Street, Suite 2600  
Houston, Texas 77002  
Telephone: (713) 654-4400  
Telecopier: (713) 654-8704

Jay L. Birnbaum  
District of Columbia Bar No. 412397  
Federal I.D. No. 03989-G  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
Telephone: (202) 371-7000  
Telecopier: (202) 393-5760

**CERTIFICATION UNDER RULE 65(b)**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, I hereby certify that notice of hearing to defendants on the temporary restraining order will provide defendants with the opportunity to alter or destroy records which will show the names of Houston Cellular customers to have had the ESN of their cellular phone altered or emulated. Absent documentation from the defendants, Houston Cellular has no way to determine if a customer is using a cellular phone with an altered or emulated ESN.

By: Carlton D. Wade, Jr.  
Carlton D. Wade, Jr.

### EXHIBIT "A"

1. All lists, files, records or other information containing names, addresses and/or telephone numbers of individuals or entities for whom you altered, transferred, emulated or manipulated the electronic serial number of cellular telephones from January 1, 1990 to the present.
2. All advertisements, brochures or other documents which advertised services you provide to the public for altering, transferring, emulating or manipulating the electronic serial number of cellular telephones.
3. Documents in your possession which identify other individuals or entities which provide services which alter, transfer, emulate or manipulate the electronic serial numbers of cellular telephones.
4. Documents which evidence any previous or current business relationship or dealings with the entity C2+ Technology.

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

**AFFIDAVIT OF ROBERT EDWARDS**

BEFORE ME, the undersigned authority, personally appeared ROBERT EDWARDS who after being duly sworn, did state under oath as follows:

"My name is Robert Edwards. I am over the age of twenty-one (21) and I am competent to make this affidavit which is made upon personal knowledge. The facts set forth in this affidavit are based upon personal knowledge and are in all things true and correct.

I am an investigator with the Guidry Group. At the request of Alan Dear of Houston Cellular Telephone Company, I was requested to obtain evidence which would show that employees of the Cellular Phone Store, located at 1313 S. Loop West, Houston, Texas, were referring Houston Cellular customers to John Nelson for the purpose of emulating cellular phones. I was further requested to see if I could prove that Mr. Nelson was emulating cellular phones provided by Houston Cellular.

On September 26, 1994, I received an activated Motorola flip (portable) phone and a non-activated Motorola bag (transportable) phone, both of which had been provided by Houston Cellular and were on Houston Cellular accounts. I obtained a subscriber agreement from Houston Cellular in my name for the activated Motorola flip phone, bearing the electronic serial number ("ESN") 827SF658. On the same day, I went to the Cellular Phone Store and explained to the receptionist that I wanted an extension for my Motorola flip phone. The receptionist directed me to the shop section of the store. In the shop section, I told a woman in the area that I wanted the same number for my inactivated bag phone which was already on my recently purchased and activated flip phone. This individual told me that this could not be done. Before she could explain why it could not be done, an individual by the name of Chris Torres said that "John" could accomplish this conversion.



Mr. Torres explained that "John" had his own business and did this type of emulation for the Cellular Phone Store. Mr. Torres explained that emulation would take approximately three days. He agreed to call "John" and did so as I waited. Mr. Torres told me that "John" said to leave the bag phone with Mr. Torres and that "John" could have the phone emulated by Thursday, September 29, 1994. I was quoted a price of \$225.00. Mr. Torres copied the phone number and ESN number from the flip phone, along with my name. He then gave me a claim check number and asked me to call his office around midday on Thursday, September 29, 1994.

On September 29, 1994, at approximately 11:00 a.m., I contacted Chris Torres by phone. Mr. Torres stated that "John" wanted to meet me at the store with the emulated phone. I told Mr. Torres that I could meet John at his store between 12:00 and 12:30 p.m.

At approximately 12:15 p.m., I was introduced to Mr. John Nelson by Chris Torres. Mr. Nelson handed me the emulated bag phone and explained that he had performed a "minor tune-up" on it. He then provided me with a typewritten letter, a copy of which is attached hereto as Exhibit "1", addressed to "Dear emulation customer."

I spent approximately 20 minutes with John Nelson in the shop area of the Cellular Phone Store. Mr. Nelson provided me with a one page, printed letter on the letterhead of Cell Time Cellular which explained the availability and advantages of cellular phone emulation. A copy of this letter is attached hereto as Exhibit "2". Mr. Nelson offered to emulate other phones for me and said he had done so to phones on boats and other vehicles. He claimed there was no limit to the number of extension phones that could be on the same number.

Mr. Nelson suggested that I obtain an additional cellular phone emulated for my mother or any other loved one. When I told him that my mother lived in Florida, Mr. Nelson said that the emulated phone would still work in Florida in a "roving-roaming" capacity. Mr. Nelson did not require any identification from me, but asked me to sign a form which had my name printed at the top along with blank spaces for home address, phone number, date of birth and social security number. This form certified that I was the authorized customer for the phone number which Mr.



Nelson emulated. When I asked Mr. Nelson "out of curiosity" how long the emulation procedure took, he replied that it took 4-6 hours.

Mr. Nelson accepted \$225.00 in cash from me as payment for this emulation. This was done after he was asked to test the emulated bag phone with an incoming and an outgoing call in my presence. Both "tests" were successful.

Mr. Nelson gave me an emulation receipt which I saw him write and sign. He explained to me that this receipt could not be on a Cellular Phone Store receipt since the emulation was not theirs but his. A copy of this receipt is attached hereto as Exhibit "3".

Mr. Nelson also indicated that he received emulation referrals from other stores in the Houston area, similar to the Cellular Phone Store, but he did not name any of these stores. Mr. Nelson provided me with several of his business cards, one of which is attached to this affidavit as Exhibit "4".

After leaving the Cellular Phone Store, I returned the two cellular phones involved in this investigation to Mr. Alan Dear of Houston Cellular. I also provided him with copies of the documents received from Mr. Nelson which are referenced above. It is my understanding that the emulated cellular phone is still in the possession of Houston Cellular.

On December 28, 1994, I again received an assignment from Houston Cellular to try to have a phone emulated. On that day, at approximately 11:35 a.m., I returned to the offices of the Cellular Phone Store and met with Victor Torres, the technical manager of the Cellular Phone Store. I explained to Mr. Torres that I had previously had my flip phone emulated with a bag phone by John Nelson at the store. Mr. Torres told me that Houston Cellular did not like the Cellular Phone Store emulating existing cellular phones, but added that he would put me in contact with John Nelson. I gave Mr. Torres my pager number and flip phone number to pass on to Mr. Nelson.

On December 29, 1994, at approximately 10:15 a.m., I was paged by phone number 360-8689. I returned the call which was answered by a male voice who said "Action Cellular." I asked

for John Nelson and the individual answering the phone told me that John Nelson was on another line. I explained that Mr. Nelson had previously emulated a phone for me and that I had another phone to be emulated. I was given the address for Action Cellular as 9100 Southwest Freeway, Suite 150, and was told that John Nelson would be available if I wanted to bring the cellular phone to Action Cellular. On December 29, 1994, at approximately 10:45 a.m., I arrived at 9100 Southwest Freeway, Houston, Texas. A sign on the door of Suite 150 stated "The Harvest Financial Group." After introducing myself to the receptionist in the office, I was greeted by an individual who introduced himself as "Ted", and who told me that he had spoken to me earlier on the phone. Ted reintroduced me to John Nelson, who had been standing nearby with his back to the door. Mr. Nelson appeared to recognize me, and led me to an office located behind and to the right of the reception area.

Mr. Nelson apologized for the condition of his office (numerous papers were strewn about his desk, and several cellular phones in their "bags" were on the desk and the floor). Mr. Nelson explained that he had just joined a new company called "Action Cellular", and that the name of this company would soon appear on the door along with "The Harvest Financial Group." He did not explain the relationship between the two companies.

I reminded Mr. Nelson that he had emulated a bag phone for me in September. Mr. Nelson asked how the phone was working. He then brought up my name on a computer whose screen was filled with the names of other customers in September of 1994. From this screen, he obtained the electronic serial number ("ESN") of my flip phone.

Mr. Nelson advised me that Houston Cellular and other similar phone companies did not appreciate the emulations that he and other small companies were doing. He said that emulations were costing the larger companies money from lost monthly service fees. He further claimed that as long as emulated phone users did not talk simultaneously, no theft of services occurred. Mr. Nelson informed me that the price for the emulation was \$250.00. When I reminded Mr. Nelson

that the previous price was \$225.00, he responded that it had increased to \$250.00, but that he would only charge me \$225.00 as a repeat customer.

Mr. Nelson provided me with eight business cards which read "Two cell phones, one cell number, one cell bill, fast, locally and legal - Call John at 713-360-8689." On one card he wrote 771 6974 in the lower right corner. A copy of this is attached hereto as Exhibit "5". Mr. Nelson also provided me with one sheet of paper from Cell Time Cellular, a copy of which is attached as Exhibit "6", which described the companies emulation service and "important points to remember." A second sheet of paper, also provided to me by Mr. Nelson and attached hereto as Exhibit "7", was an application for emulation with Cell Time Cellular.

Prior to leaving his office, I was required to sign a form which certified that I was the subscriber of the emulated flip phone and that I would not use the extension phone for anything illegal. I asked Mr. Nelson if it was technically feasible to use emulated phones simultaneously. Mr. Nelson replied that it was. He also said that the larger phone companies could detect when emulated phones were being used at the same time. Mr. Nelson suggested using a pager system to indicate periods of availability to co-users of the same emulated phones.

Mr. Nelson concluded by stating that he hoped to have my emulated bag phone ready by midday on December 29, 1994. He added that he could deliver it to me, but I expressed a preference for receiving it from his office.

When I left Mr. Nelson's office, I deliberately left the activated flip phone on his desk. After waiting in the hall for two minutes, I returned to Mr. Nelson's office to reclaim the flip phone, but Mr. Nelson was away from his desk. I then approached the receptionist and explained my problem to her. She said that Mr. Nelson was on the phone and indicated an office across the hall from her whose door was closed. Ted came out of this office and I told him that I had forgotten my flip phone but was not sure if John needed it for the emulation. John came out of this office, told me that he would not need the flip phone, and returned it to me.

On December 29, 1994, at approximately 4:00 p.m., I was paged by John Nelson. I returned his call at 771-6974. Mr. Nelson asked me if I was Bob Edwards with the Guidry Group who was working for Houston Cellular. I denied that I was that individual. I then asked him if my phone was ready and he replied that it was not. Mr. Nelson then asked me for my business phone number. I gave him a previous employer's phone number. I do not know how John Nelson discovered that I was acting as an investigator for Houston Cellular.

On December 30, 1994, I met John Nelson at the offices of Action Cellular. Mr. Nelson told me that he could not emulate my phone because it was "too new", and the emulation technology was not locally available. After appearing to be convinced that I was not an investigator, Mr. Nelson offered to ship my phone to associates in Montgomery, Alabama, who had the technology to emulate it. He claimed that this service would take seven days and an additional \$50.00 to complete. I told Mr. Nelson that I would consider his revised offer, but that I intended to shop around for less expensive and local emulation.

At this time I returned the two involved phones to Houston Cellular.

On or about February 14, 1995, I received an additional assignment from Houston Cellular. I was sent an advertisement which was received by Houston Cellular on their fax machine. The advertisement, a copy of which is attached hereto as Exhibit "8", was advertised in Adverfax and faxed to Houston Cellular. At Houston Cellular's request, I called Action Cellular Extensions at 773-9610 and asked for Danny Hart. During my conversation, I referenced the ad in Adverfax. I claimed that I saw the ad at Gerland's on Highway 6. I told Mr. Hart that I had a Motorola flip phone that I used at work. I also explained that I would like to activate an old Motorola bag phone and have the same phone number as my Motorola flip phone. He indicated that this was "not a problem."

After asking him how this process worked, Mr. Hart claimed that his company emulated the phone through an "encrypted software process". He indicated that the process was computer generated and would do nothing to alter my phone. He claimed that they were "duplicating

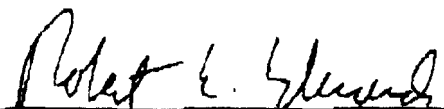
electronic serial numbers." He indicated that the fee for the emulation was \$250.00 plus tax. He further stated that you could not make a call between the two phones and you could only use one of the cellular phones at a time.

Mr. Hart indicated that the turnaround time for emulating a phone would take one day. He guaranteed that the "two phones were going to work" and that they would continue to work throughout the life of my phone.

I asked Mr. Hart if there was a place where I could come to him. He indicated that he would come to pick up my phone.

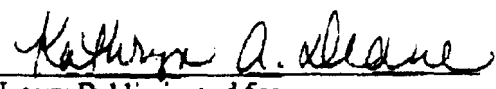
Mr. Hart indicated that he was not associated with GTE or Houston Cellular. He claimed that he had a parent company out of Alabama that he worked with. He claimed that he could emulate phones from any cellular company in the world.

Mr. Hart told me to call for an appointment and that he would come pick up the phone. I asked him if this process was legal and he stated that it was "perfectly, perfectly legal." Further affiant sayeth not."

  
ROBERT EDWARDS

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 17th day of February, 1995.



  
Notary Public in and for  
the State of Texas

Dear Emulation Customer,

Attached you will please find a form to fill out to complete the emulation of your secondary cellular phone and an information sheet about both phones.

We noted upon receipt of your secondary phone, that the antenna was not properly secured, we have rectified this situation. Also, your satisfaction level will increase greatly with all of your cellular phones if you annually get a "tune up" on each phone. You really will be surprised how a tune up will reduce your frustration with your local cellular provider (Inasmuch as in many cases, it is not the cellular companies fault that your conversation is not up to your expectations because of the need of equipment tune up).

Thank you once again for your interest in and participation of our services.

Sincerely,

John C. Nelson, Jr.

EXHIBIT

1

BE, 9-29-94

## CELL TIME CELLULAR (CTC)

5202 SYCAMORE VILLAS DR. • KINGWOOD TEXAS, 77345 • PHONE & FAX 713-360-8689

### THANK YOU FOR YOUR INQUIRY

At CTC we have the technology to enable you to have more than one phone on the same number. This technology has been available for several years, but is expensive for a carrier to provide. CTC now makes that technology affordable!!

Our CTC serviced phone will maintain its original security. The original manufacturer's software will not have been changed nor will anything be physically added to your phone which might violate the phone's FCC type approval.

### IMPORTANT POINTS TO REMEMBER

Due to deficiencies in the established system, ONLY ONE UNIT can be on at a time. If more than one phone is on, you may be in violation of your carrier's tariffs. In some instances your service may be interrupted or even terminated due to the electronic security measures utilized by the carrier.

This service is available to you from information provided by you and at your request. CTC will not assume liability for:

1. the use or nonuse of the phones; or,
2. any failure to observe any laws or regulations; or,
3. any use which might constitute either theft of services; or,
4. any use for fraudulent purposes whatsoever.

Should your Primary (activated) phone be stolen, report it to your carrier immediately. Do not attempt to use the secondary phone since it may be blocked by the carrier. Any attempt to use the phone may result in investigation for using a reportedly stolen phone.

Should your secondary (emulated) phone be stolen, request a number change from your carrier. After this change has been made your phone may have the number programmed. THEN call CTC. We will advise you of the procedure to have the new phone work with the existing phone.

Should you decide to sell your secondary (emulated) phone, or return it to the manufacturer for warranty work, call us and we will reset it to its original parameters. There will be a nominal charge plus freight for this service.

Time Cellular - Making tomorrow's technology affordable TODAY!

EXHIBIT

2

9-29-94

5

# EMULATION RECEIPT

✓ MR. EDWARDS PAID \$225.00 CASH  
FOR THE EMULATION OF  
TELEPHONE # 516-5233

JOHN NELSON

*John Nelson*

CZ + Technology



BK, 9-29-94



# The Cellular Phone Store

*VICOR*  
CHRIS TORRES  
Service and Installation

1313 South Loop West  
Houston, Texas 77054  
Office (713) 797-9600  
Fax (713) 797-9493

A national leader in  
**REPAIRS**  
Clearly The Best  
*BC 9-29-94*

## CELLULAR PHONE STORE

1313 South Loop West  
HOUSTON, TX 77054  
(713) 797-9600

NO MERCHANDISE DELIVERED WITHOUT THIS CHECK. NOT RESPONSIBLE FOR GOODS LEFT OVER 30 DAYS FOR LOSS BY FIRE OR THEFT.

*BC 9-29-94*

**CLAIM CHECK**

**1588**

**2 Cell Phones**

**1 Cell Number**

**1 Cell Bill**

**Fast, Locally & Legal**

**Call John At 713-360-8689**

*BC 9-29-94*

EXHIBIT

4

12-14-97

# The Cellular Phone Store

VICTOR TORRES  
Technical Manager

1313 South Loop West  
Houston, Texas 77054  
Office (713) 797-9600  
Fax (713) 797-9493

A SOUTHWESTERN BELL COMPANY  
**houston cellular**  
Clearly "The Best"



MAX & HELENE  
RUDICK

RE  
12-29-97

9100 Southwest Frwy.,  
Suite 150  
Houston, Texas 77074

(713) 771-6969  
Fax: (713) 771-6970

RE  
12-29-97

**2 Cell Phones**  
**1 Cell Number**  
**1 Cell Bill**  
**Fast, Locally & Legal**  
**Call John At 713-360-8689**

771-6974

RE  
12-29-97

**2 Cell Phones**  
**1 Cell Number**  
**1 Cell Bill**  
**Fast, Locally & Legal**  
**Call John At 713-360-8689**

RE  
12-29-97

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12-29-97

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12-29-97

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**1 Cell Bill**  
**Fast, Locally & Legal**  
**Call John At 713-360-8689**

EXHIBIT

5

RS 12-29-91

At CTC we have the technology to enable you to have more than one phone on the same number. This technology has been available for several years, but is expensive for a carrier to provide. CTC now makes that technology affordable!!

**Your CTC serviced phone will maintain its original security. The original manufacturer's software will not have been changed nor will anything be physically added to your phone which might violate the phone's FCC type approval.**

**A. Due to deficiencies in the established system, ONLY ONE UNIT can be on at a time. If more than one phone is on, you may be in violation of your carrier's tariffs. In some instances your service may be interrupted or even terminated due to the electronic security measures utilized by the carrier.**

**B. This service is available to you from information provided by you and at your request. CTC will not assume liability for:**

1. the use or nonuse of the phones; or,
2. any failure to observe any laws or regulations; or,
3. any use which might constitute either theft of services; or,
4. any use for fraudulent purposes whatsoever.

**C. Should your Primary (activated) phone be stolen, report it to your carrier immediately. Do not attempt to use the secondary phone since it may be blocked by the carrier. Any attempt to use the phone may result in investigation for using a reportedly stolen phone.**

**D. Should your secondary (emulated) phone be stolen, request a number change from your carrier. After this change has been made your phone may have the number programmed. THEN call CTC. We will advise you of the procedure to have the new phone work with the existing phone.**

**E. Should you decide to sell your secondary (emulated) phone, or return it to the manufacturer for warranty work, call us and we will reset it to its original parameters. There will be a nominal charge plus freight for this service.**

**Cell Time Cellular - Making tomorrow's technology affordable TODAY!**



**CELL TIME CELLULAR (CTC)****5202 SYCAMORE VILLAS DR. • KINGWOOD TEXAS, 77345 • PHONE & FAX 713-360-8689****TO:** \_\_\_\_\_ **FAX** [ ] \_\_\_\_\_**HOW DO I GET STARTED?****Its as simple as 1-2!**

(1) TYPE OR PRINT THIS INFORMATION IN BLACK INK and send it with the phone.

**PRIMARY (ACTIVATED) Phone: Make** \_\_\_\_\_ **Model** \_\_\_\_\_**PRIMARY ESN:** \_\_\_\_\_ **SERIAL #** \_\_\_\_\_**SECONDARY Phone: Make** \_\_\_\_\_ **MODEL** \_\_\_\_\_**SECONDARY ESN:** \_\_\_\_\_ **SERIAL #** \_\_\_\_\_

(Your original papers from the Dealer or Carrier should show the ESN. If you cannot find it call your Dealer. IF YOU NEED FURTHER ASSISTANCE, CALL CTC 713-360-8689)

(2) Call for pick up or send the SECONDARY PHONE ONLY VIA UPS with this form completed TO:

**CELL TIME CELLULAR 5202 SYCAMORE VILLAS DR. KINGWOOD, TX 77345****Customer Name:** \_\_\_\_\_ **Address:** \_\_\_\_\_**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_**Daytime Phone # (NOT YOUR CELLULAR PHONE #):** [ ] \_\_\_\_\_**PHONE RETURN ADDRESS** \_\_\_\_\_**SHIP VIA: SECOND DAY AIR SVC** [ ] \$ \_\_\_\_\_ **REGULAR SERVICE** [ ] \$ \_\_\_\_\_ **\*\* DELIVERY** [ ] \$ \_\_\_\_\_**\*\* PLUS \$6.00 if check not included with Order. Add \$1.00 per \$100 to insure over \$500****CERTIFICATION:** Under penalty of perjury and fraud I herby certify that I am the user activated by my Carrier company for the above primary ESN. I herby authorize and empower CTC as my Agent to perform the emulations as required on my behalf. I further certify that equipment connected to this line will be used in a legal manner and herby agree to indemnify CTC of all liabilities and responsibilities wt may be incurred by the use or nonuse of the line, phone, equipment, emulations, and enhancements without reservation.**Under NO CIRCUMSTANCES must MORE THAN ONE phone be powered on AT THE SAME TIME!****Authorized User's SIGNATURE** \_\_\_\_\_ **(LS)** **Date:** \_\_\_\_\_**SOCIAL SECURITY # or FEIN** \_\_\_\_\_ **DRIVERS LICENSE #** \_\_\_\_\_**DATE RECD:** \_\_\_\_\_ **DEALER:** \_\_\_\_\_ **AUTH #** \_\_\_\_\_**DISCLAIMER:** CTC RESERVES THE RIGHT TO MAKE CHANGES TO ITS PRODUCTS TO IMPROVE RELIABILITY, FUNCTION, OR FURTHERMORE, CTC DOES NOT ASSUME ANY LIABILITY ARISING OUT OF THE APPLICATION, USE OR NONUSE, OR OF ANY LOCAL OR FEDERAL LAWS OF ITS PRODUCTS OR SERVICES WHATSOEVER. NOR DOES IT CONVEY ANY LICENSE UNDER ITS P COPYRIGHTS, OR TRADE SECRETS, OR PERMISSION, OR THE RIGHTS OF OTHERS TO COPY ITS FEATURES, DESIGNS, DOCUMENTA SOFTWARE. IN NO INSTANCE SHALL THE CTC LIABILITY EXCEED THE AMOUNT PAID TO CTC BY THE USER. COPYRIGHT INFRIN and THEFT OF SERVICES are FEDERAL CRIMES carrying SERIOUS FELONY PENALTIES. VIOLATORS will be VIGOROUSLY PROSECUTED TO THE FULLEST EXTENT OF THE LAW!!**EXHIBIT**

7



**Gerland's  
FOOD FAIR**

## Floral Shoppe

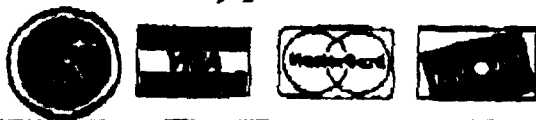
*The Freshest Cut Flowers Available:*

**Place Your Orders Now For Valentine's  
Day Delivery, Tuesday Feb. 14.**

We deliver in the Houston Metroplex and Wire  
Flowers to all 50 states and 87 countries.

*Satisfaction Guaranteed*

Order by phone **579-6159**



**SANDY S** 

**713-975-8942**

**10947 Westheimer**

**Surprise Someone With These  
Scentsational Gifts!**

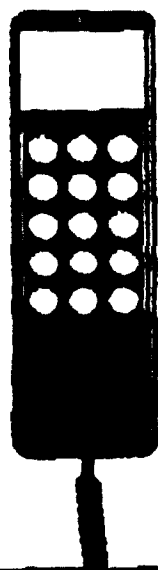
We've combined miniature bottles of fragrance from  
Elizabeth Arden with the warmth of a Hallmark  
message. Priced from \$12.00 to \$22.00

Claudia Truffles, Hallmark and Russell Stover boxed  
chocolates. Priced from 99¢ to \$19.95.

Great Gifts! Napoleon Roses, Dreamsticks, Precious,  
Moments, Cherished Teddies, All God's Children,  
Fenton, Glass Baron, Swarovski Crystal.

Gift Wrapping Available. Bags and Balloons.

*Have you ever wanted an extension to your  
Mobilphone? Now you can have that extension  
phone with no monthly fee!*



**EXTENSION  
PHONE**

**Two  
Cellular  
Phones  
One  
Cellular  
Number**

**Action Cellular Extensions**  
(713) 773-9610  
**Danny Hart**

## WOULD YOU LIKE TO BE A ZOO VOLUNTEER?

**Join the Docent Council of the Houston Zoo.**

*Zoo Docents are men and women who contribute their  
time and knowledge to educate the public - especially  
children - about zoos, wildlife and conservation.*

*As a Docent you will have a lot of fun and become  
part of a team that has come to symbolize  
volunteerism, teamwork and caring.*

**Orientation for Prospective Docents:**

Friday, February 17, 1995.....10:30 a.m.

OR

Saturday, February 18, 1995.....10:30 a.m.

Orientation is at the zoo in the  
Brown Education Center Auditorium.

**CALL 523-2878**

**or 523-2681**

**FOR MORE INFORMATION**



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publication that provides your office with valuable savings.



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EXHIBIT

8

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

**AFFIDAVIT OF MIKE HANAFIN**

BEFORE ME, the undersigned authority, personally appeared Mike Hanafin, who after being duly sworn, did state under oath as follows:

"My name is Mike Hanafin. I am over the age of eighteen (18) and I am fully competent to make this affidavit in all respects. The facts and opinions contained herein are true, correct, and based upon my personal knowledge.

I am vice president, engineering and operations at Houston Cellular. I am familiar with the technical aspects of the cellular business, including the process known as "emulation" whereby a factory installed Electronic Serial Number ("ESN") is altered. The ESN is a 32 bit binary number that uniquely identifies a cellular mobile transmitter to a cellular system. The ESN enables cellular licensees, like Houston Cellular to identify an authorized subscriber and therefore to authorize system usage and to bill properly for calls made from a cellular telephone.

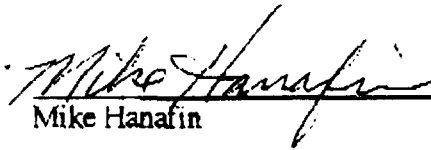
The alteration of a cellular telephone's ESN allows a person to simulate the signal of a different cellular telephone. This process, called emulation, allows one cellular telephone to emulate, or imitate, another cellular telephone. This allows a person to make a call on one cellular telephone while actually charging the call to another. Alteration of an ESN facilitates fraudulent and unauthorized cellular calls. An unauthorized user of a cellular phone with an altered ESN can make numerous local and long distance calls and have the charges billed to a totally unsuspecting cellular customer. Alternatively, ESN alteration allows a customer with two cellular phones to have one phone emulate the other, e.g., to use more than one telephone with the same telephone number, thereby avoiding monthly access charges charged by Houston Cellular and other cellular licensees. By altering an ESN, a customer can fraudulently avoid paying the monthly access charge for multiple cellular telephones, resulting in a significant loss of revenue to Houston Cellular.



Furthermore, Houston Cellular has recently offered a special long distance program whereby, for a monthly fee, Houston Cellular will allow for free air time on all long distance calls in the State of Texas. Use of this long distance program will allow a customer to call long distance from his cellular telephone and pay only the rate charged by the customer's personal long distance carrier. Houston Cellular will not charge for air time. Alteration of an ESN allows a customer to have multiple cellular telephones covered by a single payment for the long distance program, resulting in a substantial loss of revenue to Houston Cellular.

I have reviewed the AdverFax, published by Action Cellular Extensions, which states "Two Cellular Phones, One Cellular Number". Based upon my experience and knowledge, there is no method of achieving two cellular telephones with one number, which has been approved by Houston Cellular. At Houston Cellular's facilities, cellular phones with an altered ESN register as if they were the original cellular phone assigned that particular ESN and therefore Houston Cellular does not have any way to determine if a cellular telephone has been emulated. The only way that Houston Cellular can find customers with emulated telephones is to review the sales records of the emulator. Destruction of the emulator's records will leave Houston Cellular without any recourse against its customers with emulated telephones.

Further affiant sayeth not."

  
Mike Hanafin

25<sup>th</sup> SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this  
day of February, 1995.



  
Notary Public, in and for  
the State of Texas

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

#3

HOUSTON CELLULAR  
TELEPHONE COMPANY

V.

JOHN C. NELSON, individually and  
d/b/a both CELL TIME CELLULAR and  
ACTION CELLULAR and DANNY  
HART, individually and d/b/a both  
ACTION CELLULAR and ACTION  
CELLULAR EXTENSION

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C.A. NO. 95-617

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED:

MAR 1 1995

Michael N. Milby, Clerk

DEMAND FOR TRIAL BY JURY

ORDER

On Houston Cellular Telephone Company's original complaint and request for temporary restraining order, preliminary injunction and permanent injunction, filed on March 1, 1995, the Court finds:

(1) Houston Cellular Telephone Company ("Houston Cellular") is suffering injury from Defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension altering, manipulating, transferring or emulating Electronic Serial Numbers (ESN). This has resulted in an incalculable loss of revenues from, among other things, loss of monthly access and long distance access fees. This injury is irreparable because Houston Cellular has no means of monitoring the use of cellular phones with altered, manipulated, transferred or emulated ESNs, and therefore, has no way to bill for this unauthorized use of a cellular phone.

(2) Houston Cellular can only determine the names of customers using cellular phones with altered, manipulated, transferred or emulated ESNs by review of defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension's records.

(3) Houston Cellular will suffer irreparable harm if the records of defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension are altered or destroyed



prior to the granting of this temporary restraining order, and therefore, no notice to the defendants of this order was required.

Therefore, it is ordered:

(1) Defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension are enjoined from and shall cease any manipulating, altering, emulating or transferring of ESNs on cellular phones.

(2) Defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension are further enjoined from and shall cease to alter or destroy any records, defined in its broadest sense to include all written, printed, typed, recorded, or graphic matter of every kind and description, including, drafts, originals and copies, and all attachments and appendices thereto which relate or refer to the altering, manipulating, transferring or emulating of ESNs or the names of individuals and/or entities with cellular phones having altered, manipulated, emulated or transferred ESNs. Without limiting it, the term "records" includes all agreements, contracts, communications, correspondence, letters, telegrams, telexes, messages, memoranda, records, reports, books, summaries, tape recordings or other records of telephone conversations or interviews, summaries or other records of personal conversations, minutes or summaries or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, forecasts, statistical data, statistical statements, financial statements, worksheets, workpapers, drafts, grafts, maps, charts, tables, accounts, analytical records, consultants' reports, appraisals, bulletins, brochures, pamphlets, circulars, trade letters, press releases, notes, notices, marginal notations, notebooks, telephone records, bills, statements, records of obligation and expenditure, invoices, lists, journals, advertising, recommendations, print-outs, compilations, tabulations, analyses, studies, surveys, transcripts of hearings, transcripts of testimony, affidavits, expense reports, microfilm, microfiche, articles, speeches, tape or disc recordings, sound re-